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JUL 12 2000

VIDAS, ARRETT & STEINKRAUS
Suite 2000
6109 Blue Circle Drive
Minnetonka, MN 55343-9131

In re Application of :
ECKERMANN, Jens, et al. :
U.S. Application No.: 09/403,131 :
PCT No.: PCT/EP98/02097 :
International Filing Date: 09 April 1998 :
Priority Date: 16 April 1997 :
Attorney's Docket No.: H01.2-8601 :
For: A METHOD OF PACKING :
CONTAINERS IN TRANSPORT BOXES :

DECISION

This decision is issued in response to the "Response To Notification Of Defective Oath Or Declaration" filed on 15 March 2000.

BACKGROUND

On 09 April 1998, applicants filed international application PCT/EP98/02097 which claimed a priority date of 16 April 1997 and which designated the United States. On 22 October 1998, a copy of the international application was transmitted to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 16 November 1998, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the IB) and payment of the basic national fee was extended to expire 30 months from the priority date, i.e., 18 October 1999 (16 October 1999 was a Saturday).

On 14 October 1999, applicants filed a transmittal letter for entry into the national stage in the United States which indicates that it was accompanied by, among other materials: (1) an English translation of the international application, and (2) a check in the amount of \$930 for the basic national fee. The transmittal letter noted that the international application had already been transmitted by the IB.

On 29 November 1999, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date were required. The Notification also informed applicants that the failure to submit these materials within one month of the date of the Notification would result in abandonment of the application.

On 15 February 2000, applicants filed a "Response To Notice Of Missing Parts" which included an executed declaration and a check for the \$130 surcharge for filing the declaration after the 30 month deadline.

On 28 February 2000, the DO/EO/US mailed a Notification Of A Defective Response (Form PCT/DO/EO/916) and a Notification Of A Defective Oath or Declaration (Form PCT/DO/EO/917) indicating that the declaration submitted was defective because the names set forth for two of the inventors were not identical to the names contained in the published international application. The Notifications also informed applicants that the failure to submit a proper response within one month of the date of the Notification would result in abandonment of the application.

On 15 March 2000, applicants submitted the "Response To Notification Of Defective Oath Or Declaration" considered herein.

DISCUSSION

Section 605.04(b) of the Manual Of Patent Examining Procedure ("MPEP") states that:

Except for correction of a typographical or transliteration error in the spelling of an inventor's name, a request to have the name changed to the signed version or any other corrections in the name of the inventor(s) will not be entertained, unless accompanied by a petition under 35 U.S.C. 1.182 together with an appropriate petition fee.

In this case, the given name of the second inventor is listed in the published international application as "Lubbertus," while the given name for this inventor listed in the declaration and stated to be the correct name is "Lambert." This is clearly more than a mere typographical error or a phonetic misspelling of the applicant's given name. Accordingly, before the declaration identifying this inventor by the name Lambert may be accepted, applicants must make a petition under 37 CFR 1.182. For such a petition to be grantable, it must be accompanied by the requisite petition fee of \$130 as well as statements from the inventor and any other persons having firsthand knowledge of the error which resulted in the name "Lubbertus" being listed on the international application. These statements must set forth the specific circumstances as to how and when the error was made and discovered, and must also state that the mistake was an

inadvertent error without deceptive intent, or, in the case where applicant has changed his name, the statement must be signed with both names and must set forth the procedure whereby the change of name was effected. Here, applicants have submitted copies of a Power of Attorney submitted to the European Patent Office ("EP") in which inventor Brinks' given name is corrected from Lubbertus to Lambert by a handwritten, uninitialed notation, as well as a copy of a letter to the EP stating that Lambert is the correct given name for this inventor. The required statements and petition fee have not been submitted.

In addition, there is a handwritten, uninitialed correction to the name of the third inventor on the submitted declaration. This correction changes the given name of the third inventor from Bernhard to Bernard. This discrepancy could be the result of a simple typographical error which would not require a petition to correct; however, applicants must inform the Office if this is the case and which version of this inventor's given name is correct. A new declaration must also be submitted in which this handwritten correction has been initialed.

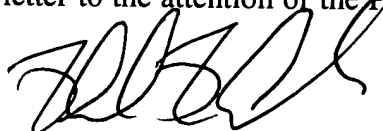
Based on the above, the declaration filed on 15 February 2000 remains defective.

CONCLUSION

Applicants' Response To Notification Of Defective Oath Or Declaration is **DISMISSED** without prejudice. As a result, the declaration of inventors submitted by applicants on 15 February 2000 remains defective.

Applicants' must file a proper response within **TWO (2) MONTHS** from the mail date of this decision. Any such response should include a cover letter entitled "Petition Under 37 CFR 1.182" and it must include an acceptable explanation of the facts in the form discussed above and be accompanied by the appropriate petition fee. Failure to file a proper response in a timely manner will result in ABANDONMENT of the application. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Richard Cole
PCT Legal Examiner
PCT Legal Office

RMR/RC:rmr



Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459